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CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

## ASSEMBLY BILL

**No. 489**

### **Introduced by Assembly Member Migden**

(Principal coauthor: Senator Machado)

(Coauthor: Senator Murray)

February 21, 2001

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An act to add Division 1.6 (commencing with Section 4970) to the Financial Code, *and to add Section 777 to the Insurance Code*, relating to lending.

#### LEGISLATIVE COUNSEL'S DIGEST

AB 489, as amended, Migden. Loans secured by real property.

Existing law provides for regulation of banks and savings associations by the Department of Financial Institutions. Existing law provides for regulation of real estate brokers by the Department of Real Estate. Existing law provides for regulation of finance lenders and

residential mortgage lenders by the Department of Corporations. Existing law provides that willful violations of provisions governing savings associations, real estate brokers, and residential mortgage lenders are crimes.

This bill would impose various requirements on consumer loans secured by *specified* real property, ~~including requiring a person who originates a consumer loan to establish and implement a best lending practice plan that meets certain minimum standards, defined as “covered loans.”~~ The bill would prohibit various acts in making ~~consumer~~ *covered* loans, including the following: failing to consider the financial ability of a borrower to repay the loan, selling ~~disability, unemployment, or life and property individual or group~~ credit insurance ~~on a prepaid single premium basis~~ without full disclosure of certain facts relevant to the loan, ~~making a loan to a mentally incapacitated person, obtaining or inducing an agreement or other instrument that contains blanks to be filled out after execution, intentionally delaying the closing of a loan for the sole purpose of increasing the interest, costs, fees, or charges payable by a borrower, engaging in fraudulent and deceptive underwriting practices, engaging in false or misleading advertising or unfair competition, and violating various federal and state laws applicable to lending~~ *recommending or encouraging a consumer to default on an existing consumer loan in order to solicit or make a covered loan that refinances the consumer loan, and making a covered loan without providing the consumer a specified disclosure.* The bill would provide that a violation of its provisions would be subject to a civil penalty and would also make a violation a crime punishable by a fine or imprisonment in a county jail. Because the bill would create new crimes, it imposes a state-mandated local program.

~~The bill would also make a statement of legislative findings and intent.~~

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.



*The people of the State of California do enact as follows:*

SECTION 1. ~~The Legislature finds and declares all of the following:~~

(a) ~~Recent experience has shown that some unscrupulous lenders and brokers engage in abusive practices in connection with loans secured by real property.~~

(b) ~~There is a lack of uniform and comprehensive regulations to ensure that lenders and brokers licensed in this state deliver the best possible mortgage loans for which their customers are qualified.~~

(c) ~~Some businesses engaged in making or brokering real estate loans have adopted their own best lending practices and peer review systems to assist themselves and state regulators in the detection and prevention of predatory and abusive lending practices.~~

(d) ~~Existing laws regulating the origination of mortgage loans do not expressly prohibit persons from controlling or otherwise assisting others in engaging in lending practices that are unlawful, unfair, deceptive, or fraudulent.~~

(e) ~~Additionally, as a matter of statewide concern, safeguards are needed to improve borrower protections against improper lending practices and to enable state regulators and local prosecutors to prevent these practices from occurring in the future.~~

(f) ~~Therefore, it is the intent of the Legislature that this division apply statewide to all loans secured by real property.~~

SEC. 2. ~~Division 1.6 (commencing with Section 4970) is added to the Financial Code, to read:~~

DIVISION 1.6. ~~BEST LENDING STANDARDS FOR  
LOANS SECURED BY REAL PROPERTY~~ \_\_\_\_

CHAPTER 1. ~~GENERAL PROVISIONS AND DEFINITIONS~~

4970. ~~For purposes of this division:~~

(a) ~~“Consumer loan” shall mean a loan secured by real property located in this state that is improved by a one-to-four family dwelling with proceeds intended by the borrower for use primarily for personal, family, or household purposes.~~

(b)

1 (a) “Affiliate” means any company that controls, is controlled  
2 by, or is under common control with, another company, as set forth  
3 in the federal Bank Holding Company Act.

4 (b) “Annual percentage rate” means the annual percentage  
5 rate for the loan calculated according to the provisions of the  
6 federal Truth in Lending Act and the regulations adopted  
7 thereunder by the Federal Reserve Board.

8 (c) (1) “Covered loan” means a consumer loan in which the  
9 original principal balance of the loan does not exceed two hundred  
10 fifty thousand dollars (\$250,000) in the case of a mortgage or deed  
11 of trust, and where one of the following conditions are met:

12 (A) For a mortgage or deed of trust, the annual percentage rate  
13 at consummation of the transaction will exceed by more than eight  
14 percentage points the yield on Treasury securities having  
15 comparable periods of maturity on the 15th day of the month  
16 immediately preceding the month in which the application for the  
17 extension of credit is received by the creditor.

18 (B) The total points and fees payable by the consumer at or  
19 before closing for a mortgage or deed of trust will exceed 6 percent  
20 of the total loan amount.

21 (2) The dollar amount specified in paragraph (1) shall be  
22 adjusted every five years in accordance with the California  
23 Consumer Price Index.

24 (d) “Points and fees” shall include the following:

25 (1) All items required to be disclosed as finance charges under  
26 Sections 226.4(a) and 226.4(b) of Title 12 of the Code of Federal  
27 Regulations, including the Official Staff Commentary, as amended  
28 from time to time, except interest.

29 (2) All compensation and fees paid to mortgage brokers in  
30 connection with the loan transaction.

31 (3) All items listed in Section 226.4(c)(7) of Title 12 of the Code  
32 of Federal Regulations, only if the person originating the covered  
33 loan receives direct compensation in connection with the charge.

34 (e) “Credit insurance” means any individual or group credit  
35 life, credit disability, credit unemployment, accident, health, or  
36 loss-of-income insurance or any other line or sub-line of insurance  
37 which may become accepted as credit insurance by the insurance  
38 and lending industries or any debt cancellation or suspension  
39 agreement or contract, whether or not the debt cancellation or

1 *suspension agreement or contract coverage is insurance under*  
2 *applicable law.*

3 (f) “Consumer loan” means a consumer credit transaction that  
4 is secured by real property located in this state used, or intended  
5 to be used or occupied, as the principal dwelling of the consumer.  
6 “Consumer loan” does not include a reverse mortgage, an open  
7 line of credit as defined in Part 226 of Title 12 of the Code of  
8 Federal Regulations (Regulation Z), or a consumer credit  
9 transaction that is secured by rental property or second homes.

10 (g) “Original principal balance” means the total initial  
11 amount the consumer is obligated to repay on the loan.

12 (h) “Licensing agency” shall mean the Department of Real  
13 Estate for licensed real estate brokers, the Department of  
14 Corporations for licensed residential mortgage lenders and  
15 licensed finance lenders and brokers, and the Department of  
16 Financial Institutions for commercial and industrial banks and  
17 savings associations and credit unions organized in this state.

18 ~~(e)~~

19 (i) “Licensed person” means a real estate broker licensed  
20 under the Real Estate Law ~~(Section 10000 et seq. (Part 1~~  
21 ~~(commencing with Section 10000) of Division 4 of the Business~~  
22 ~~and Professions Code), a finance lender or broker licensed under~~  
23 ~~the California Finance Lenders Law (Section 22000 et seq. of the~~  
24 ~~Financial Code) (Division 9 (commencing with Section 22000)),~~  
25 ~~a residential mortgage lender licensed under the California~~  
26 ~~Residential Mortgage Lending Act (Section 50000 et seq. of the~~  
27 ~~Financial Code) (Division 20 (commencing with Section 50000)),~~  
28 ~~a commercial or industrial bank organized under the Banking Law~~  
29 ~~(Section 99 et seq. of the Financial Code) (Division 1~~  
30 ~~(commencing with Section 99)), a savings association organized~~  
31 ~~under the Savings Association Law (Section 5000 et seq. of the~~  
32 ~~Financial Code) (Division 2 (commencing with Section 5000)),~~  
33 ~~and a credit union organized under the California Credit Union~~  
34 ~~Law (Section 14000 et seq. of the Financial Code). A federally~~  
35 ~~chartered institution that is not required to be licensed by a state~~  
36 ~~licensing agency is subject to the same requirements of this~~  
37 ~~division and any violation of this division shall be subject to~~  
38 ~~enforcement of the appropriate federal agency.~~

39 ~~(d) “Originate” shall mean to arrange, negotiate, process,~~  
40 ~~underwrite, or make a consumer loan.~~

1 ~~(c) “Improper lending practices” shall mean unlawful, unfair,~~  
2 ~~deceptive, or fraudulent lending practices.~~

3 ~~4971. (a) Any licensed person who originates any consumer~~  
4 ~~loan shall establish and implement on a continuous basis a best~~  
5 ~~lending practices plan. The purpose of this plan shall be the~~  
6 ~~development of best lending practices with respect to these~~  
7 ~~consumer loans, and the implementation of a system to ensure~~  
8 ~~continued compliance with these practices. The elements of this~~  
9 ~~plan shall include, but not be limited to, all of the following:~~

10 ~~(1) Adopting best lending standards which are designed to~~  
11 ~~prevent improper lending practices, including, at a minimum,~~  
12 ~~violations of Section 4973.~~

13 ~~(2) Training personnel concerning the use of best lending~~  
14 ~~standards and the detection and prevention of improper lending~~  
15 ~~practices.~~

16 ~~(3) Reviewing the performance of employees, agents, and~~  
17 ~~independent contractors in complying with best lending standards.~~

18 ~~(4) Taking adverse action against employees, agents, and~~  
19 ~~independent contractors that engage in a pattern of improper~~  
20 ~~lending practices.~~

21 ~~(5) Reporting improper lending practices that have resulted in~~  
22 ~~termination of an employee, agent or independent contractor to the~~  
23 ~~licensed person’s executive office and the appropriate licensing~~  
24 ~~agency.~~

25 ~~(6) Making good faith efforts to resolve in a prompt and~~  
26 ~~reasonable manner each consumer complaint relating to improper~~  
27 ~~lending practices no later than 60 days of receipt of the complaint.~~  
28 ~~Resolution of a consumer complaint by the licensed person under~~  
29 ~~this paragraph shall not absolve the licensed person from any other~~  
30 ~~administrative, civil, or criminal actions. The licensed person shall~~  
31 ~~maintain a system of aging of complaints that describes the nature~~  
32 ~~and the disposition of the complaint.~~

33 ~~(b) Every licensed person shall, as necessary, update its best~~  
34 ~~lending practices plan at least annually. At the time disclosures are~~  
35 ~~made pursuant to Regulation Z (12 C.F.R. 226), the licensed~~  
36 ~~person shall provide the prospective borrower with a separate~~  
37 ~~written notice printed in at least 14 point type. The notice shall~~  
38 ~~include a statement that the licensed person has implemented a best~~  
39 ~~lending practices plan, explain the manner in which the~~  
40 ~~prospective borrower may request and obtain a copy of the plan,~~

1 and provide a telephone number to call for inquiries concerning the  
2 plan. In addition, the licensed person shall disclose the plan to its  
3 prospective borrowers and licensing agency, upon request and at  
4 the time of the origination of the loan. The plan shall include a  
5 telephone number to call for inquiries concerning the plan.

6 (c) ~~Every licensed person shall make a written or electronic~~  
7 ~~copy of its best practices plan available to the public upon request~~  
8 ~~and shall make a written copy available at the licensed person's~~  
9 ~~place of business.~~

10  
11 CHAPTER 2. ~~PROHIBITED ACTS~~  
12

13 4973. ~~No licensed person shall do any of the following with~~  
14 ~~regards to a consumer loan:~~

15 (a) ~~Violate any provision of any of the following:~~

16 (1) ~~Federal Truth in Lending Act and any regulation adopted~~  
17 ~~thereunder.~~

18 (2) ~~Federal Home Ownership and Equity Protection Act and~~  
19 ~~any regulation adopted thereunder.~~

20 (3) ~~Federal Real Estate Settlement Procedures Act and any~~  
21 ~~regulation adopted thereunder.~~

22 (4) ~~Section 1670.5 of the Civil Code.~~

23 (b) ~~Fail to take into consideration in determining the size and~~  
24 ~~duration of loans, when making or arranging loans, the financial~~  
25 ~~ability of a borrower to repay the loan from income in the time and~~  
26 ~~manner provided in the loan contract.~~

27 (c) ~~Contract for or collect any charge or other fee that exceeds~~  
28 ~~the amount disclosed on any written disclosure statement unless~~  
29 ~~that charge or fee was not reasonably foreseeable at the time of the~~  
30 ~~written disclosure and the licensed person provides to the~~  
31 ~~borrower, not less than three days prior to the signing of the loan~~  
32 ~~closing documents, a clear and written explanation of the charge~~  
33 ~~or fee and the reason for exceeding the amount previously~~  
34 ~~disclosed and the fee is otherwise permitted by any other provision~~  
35 ~~of law.~~

36 (d) ~~Sell under the authority of a license promissory notes or~~  
37 ~~interests in notes evidencing loans made pursuant to the Home~~  
38 ~~Ownership and Equity Protection Act, without disclosing that~~  
39 ~~these loans were made pursuant to that law to the purchasers of~~  
40 ~~these notes or interests.~~



- 1 ~~(e) Fail to establish and implement on a continuous basis the~~  
2 ~~best lending practices plan pursuant to subdivision (a) of Section~~  
3 ~~4971.~~
- 4 ~~(f) Fail to comply with any of the update and disclosure~~  
5 ~~requirements of subdivision (b) of Section 4971.~~
- 6 ~~(g) Sell disability, unemployment, life and property credit~~  
7 ~~insurance or other similar products, where the borrower is not~~  
8 ~~informed that the product or service is not required in order to~~  
9 ~~obtain the loan and where it is not disclosed that the full cost of the~~  
10 ~~product or service to the borrower is, or is not, spread over the life~~  
11 ~~of the loan.~~
- 12 ~~(h) Fail to offer a borrower, or advise a borrower of, the full~~  
13 ~~range of products that the licensed person offers and for which the~~  
14 ~~borrower qualifies.~~
- 15 ~~(i) Make a subsequent loan to refinance the original loan that~~  
16 ~~results in no economic benefit to the borrower.~~
- 17 ~~(j) Charge points, fees or other finance charges that,~~  
18 ~~considering the consumer loan transaction as a whole, including~~  
19 ~~the creditworthiness of the consumer, the terms of the loan, the~~  
20 ~~value of the collateral, and the consumer's equity in the collateral,~~  
21 ~~exceed the usual and customary charges incurred by consumers~~  
22 ~~generally in this state for those points, fees, or other finance~~  
23 ~~charges for a similar loan or product.~~
- 24 ~~(k) (1) Require a prepayment penalty where the prepayment~~  
25 ~~penalty does not provide some benefit to the borrower, such as a~~  
26 ~~rate or fee reduction.~~
- 27 ~~(2) Fail to offer a borrower the choice of another mortgage~~  
28 ~~product that does not require a prepayment penalty.~~
- 29 ~~(3) Fail to adequately disclose to the borrower the terms of the~~  
30 ~~mortgage provision that requires a prepayment penalty.~~
- 31 ~~(4) Fail to charge the prepayment penalty when the mortgage~~  
32 ~~debt is accelerated as the result of the borrower's default in making~~  
33 ~~his or her mortgage payments.~~
- 34 ~~(5) Cover a prepayment penalty through a new loan where~~  
35 ~~there is no economic benefit that equals or exceeds the prepayment~~  
36 ~~penalty for the borrower.~~
- 37 ~~(l) Pay a contractor under a home improvement contract from~~  
38 ~~the proceeds of a loan unless (1) the lender is presented with a~~  
39 ~~signed and dated completion certificate signed by the borrower~~  
40 ~~showing that the home improvements have been completed to the~~



~~satisfaction of the borrower; or (2) the instrument is payable to the borrower, jointly to the contractor and the borrower, or at the election of the borrower, through a third-party escrow agent in accordance with terms established in a written agreement signed by the borrower, the lender, and the contractor prior to the disbursement.~~

~~(m) Make a loan to a borrower who the lender reasonably knows or suspects is mentally incapacitated.~~

~~(n) Disburse the loan proceeds in a form other than direct deposit to the borrower's account, wire, bank or certified check, Automated Clearing House (ACH) Network funds transfer, or attorney's check drawn on a trust account. A licensed person may apply to its licensing agency for a waiver of the requirements of this subdivision by demonstrating, in a letter application, that it has adopted or will adopt another method of disbursement of loan proceeds that will satisfy the purposes of this subdivision.~~

~~(o) Fail to disburse funds in accordance with a commitment to make a loan that is accepted by the applicant.~~

~~(p) Charge or accept fees at closing that are not disclosed to the borrower on the federal HUD-1 Settlement Statement.~~

~~(q) Commit an act in violation of Section 2941 of the Civil Code.~~

~~(r) Obtain or induce an agreement or other instrument in which blanks are left to be filled in after execution.~~

~~(s) Delay closing of a loan for the sole purpose of increasing interest, costs, fees, or charges payable by the borrower.~~

~~(t) Engage in fraudulent and deceptive underwriting practices.~~

~~(u) Make payment of any kind, whether directly or indirectly, to an in-house or fee appraiser of a government or private money lending agency, with which an application for a loan has been filed, for the purpose of influencing the independent judgment of the appraiser with respect to the value of real estate that is to be covered by the loan.~~

~~(v) Engage in any acts in violation of Section 17200 or 17500 of the Business and Professions Code.~~

~~(w) Use a deceptive subterfuge or device, or misrepresent, circumvent, or conceal any material aspect or information regarding a transaction to which it is a party.~~

~~(x) Do an act, whether specifically prohibited by this section or of a different character, that constitutes fraud or dishonest dealings.~~

~~(y) Commit an act in violation of Section 1695.13 of the Civil Code.~~

~~(z) Require a borrower to pay interest on the loan for a period in excess of one day prior to recording of the mortgage or deed of trust. Notwithstanding the foregoing, if the borrower affirmatively requests, and the licensee agrees, that the recording will occur on Monday, or a day immediately following a bank holiday, interest may commence to accrue on the business day immediately preceding the day of recording, provided the following is disclosed to the borrower in writing:~~

~~(1) The amount of additional per diem interest charged to accommodate recording on Monday or the day following a holiday, as the case may be.~~

~~(2) That it may be possible to avoid the additional per diem interest charge by recording the loan or deed of trust on a day immediately following a business day. This disclosure shall be provided to the borrower when the parties establish the recording date, and the borrower shall acknowledge the additional interest charge by signing the disclosure instrument. (Division 5 (commencing with Section 14000)). Nothing in this division shall be construed to prevent any enforcement by a governmental entity against any person who originates a loan and who is exempt or excluded from licensure by all of the licensing agencies, based on a violation of any provision of this division. Nothing in this division shall be construed to prevent the Department of Real Estate from enforcing this division against a licensed salesperson employed by a licensed real estate broker as if that salesperson were a licensed person under this division. A licensed person includes any person engaged in the practice of consumer lending, as defined in this division, for which a license is required under any other provision of law, but whose license is invalid, suspended or revoked, or where no license has been obtained.~~

~~(j) "Originate" means to arrange, negotiate, or make a consumer loan.~~

~~(k) "Servicer" has the same meaning provided in Section 6 (i)(2) of the Real Estate Settlement Procedures Act of 1974.~~

CHAPTER 2. PROHIBITED ACTS

4973. The following are prohibited acts and limitations for covered loans:

(a) (1) A covered loan shall not include a prepayment fee or penalty after the first 36 months after the date of consummation of the loan.

(2) A covered loan may include a prepayment fee or penalty up to the first 36 months after the date of consummation of the loan if:

(A) The person who originates the covered loan has also offered the consumer a choice of another product without a prepayment fee or penalty.

(B) The person who originates the covered loan has disclosed in writing to the consumer at least three business days prior to loan consummation the terms of the prepayment fee or penalty to the consumer for accepting a covered loan with the prepayment penalty and the rates and terms that would be available to the consumer for accepting a covered loan without a prepayment penalty.

(C) The person who originates the covered loan has limited the amount of the prepayment fee or penalty to an amount not to exceed the payment of six months' advance interest, at the rate of interest then in effect, on the amount prepaid in any 12-month period in excess of 20 percent of the original principal amount.

(D) The person who originates the covered loan will not impose the prepayment fee or penalty if the covered loan is accelerated as a result of default.

(E) The person who originates the covered loan will not finance a prepayment penalty through a new loan that is originated by the same person.

(b) (1) A covered loan that requires the payment of the entire balance of the loan before the maturity date of the loan shall not require the payment of that balance until 60 months after the consummation of the loan.

(2) For a payment schedule that is adjusted to account for the seasonal or irregular income of the consumer, the total installments in any year shall not exceed the amount of one year's worth of payments on the loan. This prohibition does not apply to a bridge loan. For purposes of this paragraph, "bridge loan"

1 means a loan with a maturity of less than 18 months that only  
2 requires payments of interest until the time when the entire unpaid  
3 balance is due and payable.

4 (c) A covered loan shall not contain a provision for negative  
5 amortization such that the payment schedule for regular monthly  
6 payments causes the principal balance to increase, unless the  
7 covered loan is a first mortgage and the licensed person discloses  
8 to the consumer that the loan contains a negative amortization  
9 provision that may add principal to the balance of the loan.

10 (d) A covered loan shall not include terms under which periodic  
11 payments required under the loan are consolidated and paid in  
12 advance from the loan proceeds.

13 (e) A covered loan shall not contain a provision that increases  
14 the interest rate as a result of a default. This provision does not  
15 apply to interest rate changes in a variable rate loan otherwise  
16 consistent with the provisions of the loan documents, provided the  
17 change in the interest rate is not triggered by the event of default  
18 or the acceleration for the indebtedness.

19 (f) (1) A person who originates covered loans shall not make  
20 or arrange a covered loan unless at the time the loan is  
21 consummated, the person reasonably believes the consumer, or  
22 consumers, when considered collectively in the case of multiple  
23 consumers, will be able to make the scheduled payments to repay  
24 the obligation based upon a consideration of their current and  
25 expected income, current obligations, employment status, and  
26 other financial resources, other than the consumer's equity in the  
27 dwelling that secures repayment of the loan. In the case of a  
28 covered loan that is structured to increase to a specific designated  
29 rate, stated as a number or formula, at a specific predetermined  
30 date not exceeding 37 months from the date of application, this  
31 evaluation shall be based upon the fully indexed rate of the loan  
32 calculated at the time of application.

33 The consumer shall be presumed to be able to make the  
34 scheduled payments to repay the obligation if, at the time the loan  
35 is consummated, the consumer's total monthly debts, including  
36 amounts owed under the loan, do not exceed 55 percent of the  
37 consumer's monthly gross income, as verified by the credit  
38 application, the consumer's financial statement, a credit report,  
39 financial information provided to the person originating the loan  
40 by or on behalf of the consumer, or any other reasonable means.

(2) No presumption of inability to make the scheduled payments to repay the obligation shall arise solely from the fact that at the time the loan is consummated, the consumer's total monthly debts, including amounts owed under the loan, exceed 55 percent of the consumer's monthly gross income.

(3) In the case of a stated income loan, the reasonable belief required in paragraph (1) may be based on the income stated by the consumer, and other information in the possession of the person originating the loan after the solicitation of all information that the person customarily solicits in connection with loans of this type. A person shall not knowingly or willfully originate a covered loan as a stated income loan with the intent, or effect, of evading the provisions of this subdivision.

(g) A person who originates a covered loan shall not pay a contractor under a home-improvement contract from the proceeds of a covered loan other than by an instrument payable to the consumer or jointly to the consumer and the contractor or, at the election of the consumer, to a third-party escrow agent for the benefit of the contractor in accordance with terms and conditions established in a written escrow agreement signed by the consumer; the person who originates a covered loan, and the contractor prior to the disbursement of funds. No payments, other than progress payments for home-improvement work that the consumer certifies is completed, shall be made to an escrow account or jointly to the consumer and the contractor unless the person who originates the loan is presented with a signed and dated completion certificate by the consumer showing that the home-improvement contract was completed to the satisfaction of the consumer.

(h) A person who originates a covered loan shall comply with Section 777 of the Insurance Code.

(i) It is unlawful for a person who originates a covered loan to recommend or encourage a consumer to default on an existing consumer loan or other debt in connection with the solicitation or making of a covered loan that refinances all or any portion of the existing consumer loan or debt.

(j) A covered loan shall not contain a call provision that permits the lender, in its sole discretion, to accelerate the indebtedness. This prohibition does not apply if repayment of the loan has been accelerated in accordance with the terms of the loan documents (1) as a result of the consumer's default, (2) pursuant to a due-on-sale

1 provision, or (3) due to fraud or material misrepresentation by a  
2 consumer in connection with the loan or the value of the security  
3 for the loan.

4 (k) A covered loan shall not refinance or arrange for the  
5 refinancing of a consumer loan such that the new loan is a covered  
6 loan that is made primarily for the purpose of refinancing, debt  
7 consolidation, or cash out and that does not result in a net benefit  
8 for the consumer considering all fees, interest rate, points, other  
9 costs, and the consumer's stated purpose for seeking the loan.

10 (l) (1) A covered loan shall not be made unless the following  
11 disclosure, written in 12-point font or larger, has been provided to  
12 the consumer no later than three business days prior to  
13 consummation of the transaction:

14  
15 CONSUMER CAUTION AND HOME OWNERSHIP  
16 COUNSELING NOTICE  
17

18 *If you obtain this loan, the lender will have a mortgage on your*  
19 *home. You could lose your home, and any money you have put into*  
20 *it, if you do not meet your obligations under the loan.*

21 *Mortgage loan rates and closing costs and fees vary based on*  
22 *many other factors, including your particular credit and financial*  
23 *circumstances, your earnings history, the loan-to-value requested,*  
24 *and the type of property that will secure your loan. Higher rates*  
25 *and fees may be justified depending on the individual*  
26 *circumstances of a particular consumer's application. You should*  
27 *shop around and compare loan rates and fees.*

28 *This particular loan may have a higher rate and total points and*  
29 *fees than other mortgage loans and is, or may be, subject to the*  
30 *additional disclosure and substantive protections under Division*  
31 *1.6 (commencing with Section 4970 of the Financial Code. You*  
32 *should consider consulting a qualified independent credit*  
33 *counselor or other experienced financial advisor regarding the*  
34 *rate, fees, and provisions of this mortgage loan before you proceed.*  
35 *For information on contacting a qualified credit counselor, ask*  
36 *your lender or call the United States Department of Housing and*  
37 *Urban Development's counseling hotline at 1-888-466-3487 or go*  
38 *to [www.hud.gov/fha/sfh/hcc](http://www.hud.gov/fha/sfh/hcc) for a list of counselors.*





1     *You are not required to complete any loan agreement merely*  
2     *because you have received these disclosures or have signed a loan*  
3     *application.*

4     *If you proceed with this mortgage loan, you should also*  
5     *remember that you may face serious financial risks if you use this*  
6     *loan to pay off credit card debts and other debts in connection with*  
7     *this transaction and then subsequently incur significant new credit*  
8     *card charges or other debts. If you continue to accumulate debt*  
9     *after this loan is closed and then experience financial difficulties,*  
10    *you could lose your home and any equity you have in it if you do*  
11    *not meet your mortgage loan obligations.*

12    *Property taxes and homeowner's insurance are your*  
13    *responsibility. Not all lenders provide escrow services for these*  
14    *payments. You should ask your lender about these services.*

15    *Your payments on existing debts contribute to your credit*  
16    *ratings. You should not accept any advice to ignore your regular*  
17    *payments to your existing creditors.*

18    (2) *It shall be a rebuttable presumption that a licensed person*  
19    *has met its obligation to provide this disclosure if the consumer*  
20    *provides the licensed person with a signed acknowledgment of*  
21    *receipt of a copy of the notice set forth in paragraph (1).*

22    (m) (1) *A person who originates a covered loan shall not steer,*  
23    *counsel, or direct any prospective consumer to accept a loan*  
24    *product with a risk grade less favorable than the risk grade that the*  
25    *consumer would qualify for based on that person's then current*  
26    *underwriting guidelines, prudently applied, considering the*  
27    *information available to that person, including the information*  
28    *provided by the consumer.*

29    *A person shall not be deemed to have violated this section if the*  
30    *risk grade determination applied to a consumer is reasonably*  
31    *based on the person's underwriting guidelines if it is an*  
32    *appropriate risk grade category for which the consumer qualifies*  
33    *with the person.*

34    (2) *If a broker originates a covered loan, the broker shall not*  
35    *steer, counsel, or direct any prospective consumer to accept a loan*  
36    *product at a higher cost than that for which the consumer could*  
37    *qualify based on the loan products offered by the persons with*  
38    *whom the broker regularly does business.*



(n) A person who originates a covered loan shall not avoid, or attempt to avoid, the application of this division by doing the following:

(1) Structuring a loan transaction as an open end credit plan for the purpose of evading the provisions of this division when the loan would have been a covered loan if the loan had been structured as a closed end loan.

(2) Dividing any loan transaction into separate parts for the purpose of evading the provisions of this division.

(o) A person who originates a covered loan shall not act in any manner, whether specifically prohibited by this section or of a different character, that constitutes fraud.

### CHAPTER 3. ENFORCEMENT

~~4974. (a) Any licensed person, or the head officer or manager at the business location where a violation of this division occurs, who with knowledge directly or indirectly controls and induces any person to violate any provision of Section 4973 shall be deemed to be in violation of that provision to the same extent as the controlled and induced person.~~

~~(b) Any licensed person that knowingly provides substantial assistance to another person in violation of any provision of Section 4973 shall be deemed to be in violation of that provision to the same extent as the person to whom assistance was provided.~~

~~(c) It shall be unlawful for any licensed person to directly or indirectly do any act or thing that would be unlawful for that licensed person to do under any provision of Section 4973 through or by any other person.~~

~~4975. (a) (1) Any licensed person who violates any provision of Section 4973 shall be deemed to have violated that person's licensing law.~~

~~(2) After any action under paragraph (2) of subdivision (a) of Section 4976 resulting in a conviction, the licensing agency shall bring a proceeding to suspend the license of the licensed person for not less than six months.~~

~~(b) After any action under paragraph (3) of subdivision (a) of Section 4976 resulting in a conviction, the licensing agency shall bring a proceeding to permanently revoke the license of the licensed person.~~

1 ~~(c) Any civil, criminal, and administrative authority and~~  
2 ~~remedies available to the licensing agency pursuant to its licensing~~  
3 ~~law may be sought and employed in any combination deemed~~  
4 ~~advisable by the licensing agency to enforce the provisions of this~~  
5 ~~division.~~

6 ~~(d) A licensing agency may exercise any and all authority and~~  
7 ~~powers available to it under any other provisions of law, to~~  
8 ~~administer and enforce this division, including, but not limited to,~~  
9 ~~investigating and examining the licensed person's best practices~~  
10 ~~plan, books, and records, and charging for and collecting the costs~~  
11 ~~of these activities. A licensing agency shall examine a licensed~~  
12 ~~person's compliance with this division when conducting an~~  
13 ~~examination.~~

14 ~~(e) Nothing in this section shall be construed to impair or~~  
15 ~~impede a licensing agency's authority under any other provision~~  
16 ~~of law.~~

17 ~~4976. (a) A licensed person who violates any provision of~~  
18 ~~Section 4973 shall, upon conviction, be subject to the following:~~

19 ~~(1) For the first violation, a fine equal to the total loan amounts~~  
20 ~~originated in violation of Section 4973, or up to one million dollars~~  
21 ~~(\$1,000,000).~~

22 ~~(2) For the second violation, a fine equal to twice the total loan~~  
23 ~~amounts originated in violation of Section 4973, or up to five~~  
24 ~~million dollars (\$5,000,000), or imprisonment in a county jail for~~  
25 ~~up to six months, or both fine and imprisonment.~~

26 ~~(3) For the third and subsequent violation, a fine equal to three~~  
27 ~~times the loan amounts originated in violation of Section 4973, or~~  
28 ~~up to ten million dollars (\$10,000,000), or imprisonment in the~~  
29 ~~county jail for up to one year, or by both fine and imprisonment.~~

30 ~~(b) An action under this section shall be brought by the district~~  
31 ~~attorney, and any penalty collected in an action shall be paid to the~~  
32 ~~treasurer of the county in which the judgment was rendered.~~  
33 ~~One-half of the penalty shall be allocated by the county to~~  
34 ~~programs that educate consumers about avoiding predatory~~  
35 ~~lending practices, community-based programs to provide low-cost~~  
36 ~~alternatives to subprime credit and consumer complaint resolution~~  
37 ~~services. The other half of the penalty may be allocated by the~~  
38 ~~county for enforcement.~~

~~(c) Nothing in this division limits the power of the state to punish any person for any conduct which constitutes a crime under any other statute.~~

~~4977. (a) In addition to any other remedies available to it under any other provision of law, a licensing agency may bring a civil action against a licensed person who has violated any provision of this division, which shall be brought in the name of the people of the State of California in any court of competent jurisdiction, and the licensed person shall be liable for the following penalties:~~

~~(1) For the first violation, a fine equal to the total loan amounts originated in violation of Section 4973, or up to one million dollars (\$1,000,000).~~

~~(2) For the second violation, a fine equal to twice the total loan amounts originated in violation of Section 4973, or up to five million dollars (\$5,000,000).~~

~~(3) For the third and subsequent violation, a fine equal to three times the loan amounts originated in violation of Section 4973, or up to ten million dollars (\$10,000,000).~~

~~(b) Nothing in this division shall prevent a private party from bringing a civil action for enforcement for a violation of the division's provisions. Nothing in this division requires exhaustion of administrative remedies prior to a private party bringing a civil action for enforcement.~~

~~(c) The amounts collected under subdivision (a) shall be deposited in the appropriate fund of the licensing agency to be used by that licensing agency, subject to appropriation by the Legislature, for the purposes of education and enforcement in connection with predatory lending.~~

~~(d) If the licensing agency determines that it is in the public interest, the licensing agency may include, in any action for penalties authorized by subdivision (a), a claim for relief in addition to the penalties, including a claim for restitution, disgorgement, or damages on behalf of the persons injured by the violation, and the court shall have jurisdiction to award the additional relief.~~

~~(e) Nothing in this section shall be construed to impair or impede the Attorney General from representing a licensing agency in bringing an action to enforce this division at the request and on behalf of the licensing agency. Nor shall this section be construed~~

1 ~~to impair or impede an action under any other provision of law~~  
2 ~~including Sections 17200 and 17500 of the Business and~~  
3 ~~Professions Code.~~

4 ~~(f) In any action brought by the licensing agency or district~~  
5 ~~attorney under this division, the licensing agency or district~~  
6 ~~attorney shall be entitled to recover costs which, in the discretion~~  
7 ~~of the court, may include an amount representing reasonable~~  
8 ~~attorneys fees and investigative expenses for services rendered for~~  
9 ~~deposit in the appropriate fund of that state or local agency.~~

10 ~~(g) The Attorney General, a district attorney, or a city attorney,~~  
11 ~~may bring an action to seek relief provided pursuant to this section~~  
12 ~~against a federally chartered institution engaged in the business of~~  
13 ~~lending in this state who has violated any provision of this division.~~

14 ~~4978. A licensed person, in providing real estate brokerage~~  
15 ~~services, as defined in Section 10131 of the Business and~~  
16 ~~Professions Code, to a consumer, is acting as the agent of the~~  
17 ~~consumer and owes that consumer a fiduciary duty of utmost care,~~  
18 ~~honesty, and loyalty in the transaction, including the duty of full~~  
19 ~~disclosure of all material facts. If the broker is authorized to act as~~  
20 ~~an agent for any other person relative to the transaction, the broker~~  
21 ~~shall disclose that fact and the identification of that person in a~~  
22 ~~written statement.~~

23 *4974. (a) Any compliance failure that was not willful or*  
24 *intentional and resulted from a bona fide error, that occurred*  
25 *notwithstanding the maintenance of procedures reasonably*  
26 *adopted to avoid those errors, including, but not limited to, those*  
27 *involving clerical, calculation, computer malfunction and*  
28 *programming, and printing errors shall be corrected no later than*  
29 *45 days after receipt of the complaint or discovery of the error. A*  
30 *person who originates a covered loan shall not be*  
31 *administratively, civilly, or criminally liable for a bona fide error*  
32 *corrected pursuant to this section.*

33 *(b) If a person who originates covered loans makes a loan*  
34 *where the person knew or should have known of a willful and*  
35 *knowing violation of this division by a broker, the person and*  
36 *broker shall be jointly and severally liable for all damages*  
37 *awarded under this division with respect to the broker's unlawful*  
38 *conduct.*

1     4975. (a) (1) Any licensed person who violates any  
2     provision of Section 4973 shall be deemed to have violated that  
3     person's licensing law.

4     (2) After any action under Section 4978.5 resulting in a  
5     conviction, the licensing agency may bring a proceeding to  
6     suspend the license of the licensed person for not less than six  
7     months and not more than 3 years.

8     (b) After any action under Section 4978.5 resulting in a second  
9     or subsequent conviction, the licensing agency may bring a  
10    proceeding to permanently revoke the license of the licensed  
11    person or impose any lesser licensed sanction for at least 3 years.

12    (c) A licensing agency may exercise any and all authority and  
13    powers available to it under any other provisions of law, to  
14    administer and enforce this division. A licensing agency may  
15    charge and collect reasonable costs for enforcing this division.  
16    However, nothing in this subdivision shall authorize the imposition  
17    or collection of charges or fees that duplicate charges or fees  
18    authorized under any other provision of law.

19    (d) Nothing in this section shall be construed to impair or  
20    impede a licensing agency's authority under any other provision  
21    of law.

22    4977. (a) A licensing agency may, after appropriate notice  
23    and opportunity for hearing, by order levy administrative  
24    penalties against a person who violates any provision of this  
25    division, and the person shall be liable for administrative penalties  
26    of not more than two thousand five hundred dollars (\$2,500) for  
27    each violation. Except for licensing agencies exempt from the  
28    provisions of the Administrative Procedures Act, any hearing shall  
29    be held in accordance with the Administrative Procedure Act  
30    (Chapter 5 (commencing with Section 11500) of Part 1 of Division  
31    3 of Title 2 of the Government Code), and the licensing agency  
32    shall have all the powers granted under that act.

33    (b) Any person who willfully and knowingly violates any  
34    provision of this division shall be liable for a civil penalty of not  
35    more than twenty-five thousand dollars (\$25,000) for each  
36    violation which shall be assessed and recovered in a civil action  
37    brought in the name of the people of the State of California by the  
38    licensing agency in any court of competent jurisdiction.

39    (c) Nothing in this section shall be construed to preclude an  
40    injured party from bringing a civil action for a violation of the

1 *division's provisions. Nothing in this section requires exhaustion*  
2 *of administrative remedies prior to an injured party bringing a*  
3 *civil action.*

4 *(d) If the licensing agency determines that it is in the public*  
5 *interest, the licensing agency may include, in any action for*  
6 *penalties authorized by subdivision (b), a claim for relief in*  
7 *addition to the penalties, including a claim for restitution,*  
8 *disgorgement, or damages on behalf of the persons injured by the*  
9 *violation, and the court shall have jurisdiction to award the*  
10 *additional relief.*

11 *(e) Nothing in this section shall be construed to impair or*  
12 *impede the Attorney General from representing a licensing agency*  
13 *in bringing an action to enforce this division at the request and on*  
14 *behalf of the licensing agency.*

15 *(f) In any action brought by the licensing agency or the*  
16 *Attorney General under this division in which a judgment against*  
17 *a person is rendered, the licensing agency or the Attorney General*  
18 *shall be entitled to recover costs which, in the discretion of the*  
19 *court, may include an amount representing reasonable attorney's*  
20 *fees and investigative expenses for services rendered for deposit in*  
21 *the appropriate fund of that state agency.*

22 *(g) The amounts collected under subdivisions (a) and (b) shall*  
23 *be deposited in the appropriate fund of the licensing agency to be*  
24 *used by that licensing agency, subject to appropriation by the*  
25 *Legislature, for the purposes of education and enforcement in*  
26 *connection with abusive lending practices.*

27 *4978. (a) A person who fails to comply with the provisions of*  
28 *this division is civilly liable to the consumer in an amount equal*  
29 *to any actual damages suffered by the consumer, plus attorneys*  
30 *fees and costs. In the event actual damages cannot be ascertained,*  
31 *upon a showing of harm based on a willful and knowing violation*  
32 *of this division, the person shall be liable to the consumer in an*  
33 *amount not to exceed fifty thousand dollars (\$50,000), plus*  
34 *attorneys fees and costs.*

35 *(b) A court in which any action is brought by, or on behalf of,*  
36 *an aggrieved consumer for relief may issue an order or injunction*  
37 *to reform the terms of the covered loan to conform to the provisions*  
38 *of this division. The court may, in addition to any other remedy,*  
39 *award punitive damages to the consumer upon a finding that such*



1 damages are warranted pursuant to Section 3294 of the Civil  
2 Code.

3 4978.5. (a) Any person who originates a covered loan that  
4 willfully and knowingly violates Section 4973 shall, upon  
5 conviction, be subject to a fine of not more than two hundred fifty  
6 thousand dollars (\$250,000), or imprisonment in a county jail, or  
7 by both fine and imprisonment.

8 (b) An action under this section shall be brought by the district  
9 attorney and, notwithstanding any other provision of law, the base  
10 fine collected shall be paid to the treasurer of the county in which  
11 the action was brought. One half of the fine shall be allocated by  
12 the county to programs that educate consumers about avoiding  
13 abusive lending practices, community-based programs to provide  
14 low-cost alternatives to subprime credit, and consumer complaint  
15 resolution services.

16 (c) Nothing in this division limits the power of the state to  
17 punish any person for any conduct that constitutes a crime under  
18 any other statute. Nothing in this division shall be construed to  
19 impair or impede an action under any other provision of law.

20 4978.6. A person who originates covered loans shall inform  
21 any employee, who originates covered loans on behalf of the  
22 person, of the administrative, civil, and criminal penalties for a  
23 violation of this division.

24 4979. Upon request, a person who originates a covered loan  
25 shall provide the consumer, at no cost, documentation regarding  
26 his or her loan that clearly demonstrates whether any loan is a  
27 covered loan. This documentation shall include, but not be limited  
28 to, full disclosure of the original principal balance, the annual  
29 percentage rate, and the total points and fees, as defined in Section  
30 4971.

31 4979.5. (a) A person who provides brokerage services to a  
32 borrower in a covered loan transaction by soliciting lenders or  
33 otherwise negotiating a consumer loan secured by real property,  
34 is the fiduciary of the consumer, and any violation of the person's  
35 fiduciary duties shall be a violation of this section. A broker who  
36 arranges a covered loan owes this fiduciary duty to the consumer  
37 regardless of who else the broker may be acting as an agent for in  
38 the course of the loan transaction.





(b) A licensed person, other than a broker, or subsequent assignee shall have no administrative, civil, or criminal liability for a violation of this section.

4979.6. A person who originates a covered loan shall not make a covered loan that finances points and fees in excess of 6 percent of the total loan amount.

4979.7 The provisions of this act shall not impose liability on an assignee that is a holder in due course.

SEC. 3. The provisions of this act shall apply to a consumer loan originated on or after July 1, 2002.

SEC. 4. Section 777 is added to the Insurance Code, to read:

777. (a) Until July 1, 2002, a licensed person shall not sell any individual or group credit insurance on a prepaid single premium basis in conjunction with any consumer loan unless the following conditions are met:

(1) The licensed person also offers to the consumer the option of purchasing all that insurance on a monthly premium basis.

(2) The licensed person provides to the consumer a separate disclosure in 12-point font or larger, with a copy acknowledged by the insured, no later than the time of closing, the following notice:

#### INSURANCE NOTICE TO CONSUMER(S)

You have elected to purchase credit life, accident and health or unemployment insurance in conjunction with this mortgage loan. The cost of this insurance is being prepaid and financed at the interest rate provided for in the loan.

This insurance is NOT required as a condition of closing this loan and has been included with the loan AT YOUR REQUEST. At any time you have the right to cancel any or all such policies purchased in conjunction with this loan. You may cancel your policy or policies by signing and returning a copy of this notice to your lender or you may contact your lender directly.

If you cancel your insurance within 30 days of the date of your loan, then you will receive either a full refund or a credit against your loan account. If you cancel your insurance at any other time, you will receive either a refund or credit against your loan account of any unearned premium.

YOU MUST CANCEL WITHIN 30 DAYS OF THE DATE OF THE LOAN TO RECEIVE A FULL REFUND.

## CREDIT INSURANCE CANCELLATION

I (we) request that the lender cancel the \_\_\_\_ Insurance that I (we) purchased in conjunction with my (our) loan dated \_\_\_\_.

\_\_\_\_\_(Date)

\_\_\_\_\_(Consumer signature)

## ACKNOWLEDGMENT OF RECEIPT

I (we) acknowledge receipt of the above notice.

\_\_\_\_\_(Date)

\_\_\_\_\_(Consumer signature)

(3) If a consumer elects to cancel, within 30 days of the date of the consumer loan, any credit insurance product purchased on a single prepaid premium basis in conjunction with a covered loan, the licensed person or the insurance company who sold the insurance, or the insurance company providing the product, shall give the consumer either a full premium refund or a full premium credit against the unpaid loan balance.

(4) If a consumer elects to cancel any single prepaid premium credit insurance product purchased in conjunction with a consumer loan at any other time, after 30 days of the date of issuance, the refund or credit shall be computed using the actuarial method.

(b) Beginning July 1, 2002, a licensed person shall not sell any individual or group credit insurance on a prepaid single premium basis in conjunction with a consumer loan.

(c) For purposes of this section, “licensed person,” “consumer loan,” and “credit insurance” have the same meaning as that provided in Section 4970 of the Financial Code.

SEC. 5. The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 6. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school

1 district will be incurred because this act creates a new crime or  
2 infraction, eliminates a crime or infraction, or changes the penalty  
3 for a crime or infraction, within the meaning of Section 17556 of  
4 the Government Code, or changes the definition of a crime within  
5 the meaning of Section 6 of Article XIII B of the California  
6 Constitution.

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